

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICKY FRANKLIN

Case No.: 1:18-cv-00161-LJV

Plaintiff,

vs.

BISON RECOVERY GROUP, INC.

Defendant.

**DEFENDANT BISON RECOVERY GROUP, INC.’S OPPOSITION TO PLAINTIFF’S
SUMMARY JUDGMENT MOTION**

Defendant Bison Recovery Group, Inc (“Defendant”), by and through undersigned counsel, and for the same reasons set forth in Defendant’s Fed. R. Civ. P. 56(d) Motion (Dkt. 22) submits the following in opposition to Plaintiff Ricky Franklin’s Motion for Summary Judgment.

PRELIMINARY STATEMENT

As noted in Defendant’s Fed. R. Civ. P. 56(d) Motion, Plaintiff’s Motion for Summary Judgment is premature. (Dkt. 22). Plaintiff failed to engage in discovery prior to filing his Summary Judgment Motion. In that regard, Defendant’s ability to defend itself against Plaintiff’s Motion for Summary Judgment has been undermined. (Dkt. 22-2, 22-3).

As a general rule, the party opposing a motion for summary judgment should be permitted an adequate opportunity to complete discovery prior to consideration of the motion. *See Trebor Sportswear Co. v. The Ltd. Stores, Inc.*, 865 F.2d 506, 511 (2d Cir. 1989) (“the nonmoving party must have “had the opportunity to discover information that is essential to his opposition” to the motion for summary judgment”) *Ben v. United States*, 160 F. Supp. 3d 460, 470 (N.D.N.Y. 2016); *Schulz v. United States, Internal Revenue Serv.*, 2016 WL 10649270, at *5 (N.D.N.Y. May 6,

2016). Indeed, the purpose of Fed. R. Civ. P. 56(d) is to “shield a party against the entry of summary judgment where it has not had an adequate opportunity to defend.” All Am. Tel. Co., Inc. v. AT & T Corp., 328 F. Supp. 3d 342, 358 (S.D.N.Y. 2018), appeal withdrawn, WL 9739272 (2d Cir. Dec. 28, 2018). Here, Plaintiff filed his Summary Judgment Motion three days after the Scheduling Order was filed, prior to serving his responses to discovery and without submitting to a deposition. (Dkt. 22-2). Accordingly, Defendant has not had any opportunity to evaluate the facts central to Plaintiff’s claim or formulate a response to Plaintiff’s Motion for Summary Judgment.

As explained more fully in Defendant’s Fed. R. Civ. P. 56(d) Motion, due to the procedural posture of the case, Defendant submits the Court should deny Plaintiff’s Motion for Summary Judgment as premature, or in the alternative, defer consideration of the motion until the close of discovery before considering Plaintiff’s Motion for Summary Judgment.

CONCLUSION

For all the forgoing reasons described above and specifically identified in the attached Declaration, Defendant Bison Recovery Group, Inc., respectfully requests that Plaintiff’s Motion for Summary Judgment be denied as premature, or in the alternative, that this Court defer consideration of the motion until the close of discovery before considering Plaintiff’s Motion for Summary Judgment, together with such other and further relief as the Court deems just and proper.

Dated: February 14, 2020

LIPPES MATHIAS WEXLER FRIEDMAN LLP

/s Brendan H. Little

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2020, I electronically filed the foregoing Memorandum via the CM/ECF system, which should then send notification of such filing to all counsel of record. A copy of the Memorandum was also sent by first class mail to Plaintiff Ricky Franklin at:

Ricky Franklin
708 Brambling Way
Stockbridge, GA 30281

/s Brendan H. Little
Brendan H. Little, Esq.